ORAL ARGUMENT SCHEDULED FOR MARCH 1, 2024

No. [03-2024]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

J.D. and K.D.,

Plaintiff-Appellants

---v.---

Universal Health Insurance Co.,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
CASE NO. 23-CV-499

BRIEF FOR DEFENDANT-APPELLEE

TEAM 6
Counsel for Defendant-Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Treatises

Regulations

STATEMENT OF THE ISSUES

I. Whether the district court properly found that Appeallant is not entitled to proceed anonymously due to her mental health issues, given that (1) her mental health issues are not a matter of a sensitive and highly personal nature, (2) she does not provide any concrete evidence that identification would pose a risk of mental harm, (3) the public has an interest in an open court proceeding.

II. Whether the district court properly dismissed Appellant's § 502(a)(3) claim given that, (1) Appellant offered no evidence to support her allegations than Universal's declaration that it would not be approving her for more treatment than it believes necessary, (2) § 502(a)(1)(B) provides a complete remedy for her claims, and (3) Amara did not change the landscape with respect to dismissing duplicative claims under § 502(a)(1)(B) and § 502(a)(3).

STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

The lower court Denied K.D.'s Motion stating the strong public interest in open court proceedings and concluding, that under the totality of the circumstances, no extraordinary circumstances support K.D.'s Motion. The lower court Granted Universal's Motion on the grounds that Count II was duplicative of Count I but also rejected Universal's arguments that the Plan does not expressly or as applied violate the MHPAEA. On appeal, K.D. requests that this Court overturns its dismissal of their Motion and granting of Universal's Motion. Universal

requests that this Court upholds the lower court's ultimate decisions; however, requests that this Court reject the lower court's finding that Universal's argument lack of express or as applied violation was an improper merits-based argument.

B. BACKGROUND

K.D. alleges that she suffers from three mental health related illnesses: major depressive disorder, generalized anxiety disorder, and substance use disorder. (Complaint. 3.) In early 2022, K.D. received plan authorized intensive outpatient treatment for her depression and anxiety three days a week through Road to Recovery, which was allegedly unsuccessful (Complaint. 2-3.) On March 1, 2022, K.D. allegedly attempted suicide and was subsequently admitted to a psychiatric hospital for three weeks. (Complaint. 3.) While hospitalized, medical professionals recommended that K.D. receive "partial hospitalization" level of treatment five days a week through Road to Recovery. After release but prior to beginning this treatment, K.D. allegedly overdosed on heroine laced with fentanyl and was hospitalized for an additional three weeks, paid for by Universal (Complaint. 3.) Following this incident, medical professional recommended that K.D. be admitted to Lifeline Inc. for a more intensive residential treatment to treat her mental illness and substance abuse disorder. (Complaint. 3.) Universal approved three weeks of treatment at Lifeline Inc. which K.D. began on April 18, 2022. On May 9, 2022, following the conclusion of her treatment, the reviewing physician for Universal, Dr. James Matzer, determined that residential treatment was no longer medically necessary and partial hospitalization was appropriate. (Complaint. 3-4.) Pursuant to the plan documents, Universal sent a letter to K.D. informing her of her rights and Dr. Matzer's determination. (Exhibit B. 1.) K.D. appealed this decision to Universal, and her file was thoroughly reviewed by a different

medical profession who denied her appeal as residential treatment was no longer medically necessary under the Plan. (Exhibit C. 1.) Consequently, J.D. continued to pay for residential treatment at Lifeline Inc. for an additional twelve months, allegedly on the advice of Lifeline Inc. staff. (Complaint. 4.) Following those additional twelve months, K.D.'s treatment team allegedly determined that she was in recovery and could transition to outpatient treatment. (Complaint. 4.) Now enrolled in college and healthy, K.D. maintains that she continues to be at risk of relapse (Complaint. 4.)

SUMMARY OF ARGUMENT

Count I: The district court properly denied Appellant's motion to proceed anonymously. Because Federal Rule of Civil Procedure 10 is clear that the title of the complaint must name all the parties, courts only allow a plaintiff to proceed anonymously in exceptional cases dealing with highly sensitive personal matters where there is a concrete risk of mental harm to the requesting party. Appellant did not make a showing that her mental health issues carry a social stigma or are otherwise so highly sensitive and personal to require anonymity. Furthermore, Appellant does not allege any concrete mental harm that would occur should her name be filed with the case. Her claims amount to nothing more than attempts to avoid the annoyance and criticism that may come with filing this case. Forcing Universal to face the public criticism that results from accusations of serious federal wrongdoing, while shielding the accuser from the same public scrutiny would be unconscionable. Consequently, Appellant's interest in proceeding

anonymously does not outweigh the fundamental, constitutionally protected interest of the public in an open court system and their right to know who is exploiting it.

Count II: The district court properly dismissed Count II because Appellant failed to allege any plausible facts upon which relief could be claimed and failed to identify any remedies she was entitled to. Appellant offered no evidence to support her allegations than Universal's declaration that it would not be approving her for more treatment than it believes necessary. That is consistent with the plan terms, and is consistent with how Universal administers medical and surgical claims. Appellant offers no evidence to indicate otherwise. Further, to interpret Universal's declaration that it would not be approving her for more treatment than it believes necessary as having a "fail first" policy is to do no more than make baseless, conclusory allegations. Additionally, appellant seeks to redress her claim under § 502(a)(3) by seeking remedies that are duplicative of remedies already available to her for a claim under § 502(a)(1)(B). When the only remedies a plaintiff seeks under § 502(a)(3) are elsewhere available, then they are not 'appropriate' to seek under § 502(a)(3), and are thus not available. Accordingly, appellant fails to state a claim for relief under § 502(a)(3).

Finally, we argue that *Amara* did not change the landscape with respect to dismissing duplicative claims under § 502(a)(1)(B) and § 502(a)(3), and Circuits that argue otherwise misunderstand *Amara*.

STANDARDS OF REVIEW

Count One

When reviewing a District Court's decision to deny a defendant's motion to proceed anonymously, this court "review[s] de novo the criteria used by a district court to decide whether to grant a motion to proceed anonymously, [and] review[s] a court's application of those criteria only for an abuse of discretion." *In re Sealed Case*, 931 F.3d 92, 96 (D.C. Cir. 2019). "In so doing, we must consider whether the decision maker failed to consider a relevant factor or relied on an improper factor, and whether the reasons given reasonably support the conclusion." *Id*. "An appellate court, in reviewing for an abuse of discretion, must consider ... whether the reasons given reasonably support the conclusion." *Id*.

Count Two

When analyzing a district court's decision to grant a defendant's motion to dismiss, this Court reviews "de novo the dismissal of a complaint for failure to state a claim, accepting a plaintiff's factual allegations as true and drawing all reasonable inferences in a plaintiff's favor." *Momenian v. Davidson*, 878 F.3d 381, 387 (D.C. Cir. 2017).

ARGUMENT

I. Appellants Did Not Carry Their Burden in Order to Be Granted Their Motion to Proceed Anonymously

For nearly 100 years, it has been firmly established that plaintiffs are required to identify themselves in civil complaints. Fed. R. Civ. P. 10. This rule is not simply for administrative

convenience, as "it protects the public's legitimate interest in knowing all of the facts involved, including the identities of the parties." *Doe v. Frank*, 951 F.2d 320, 322 (11th Cir. 1992). "The presumption of openness in judicial proceedings is a bedrock principle of our judicial system," *In re Sealed Case*, 971 F.3d 324, 325 (D.C. Cir. 2020), and is both "customary and constitutionally protected." *Id*. Despite this deeply rooted tradition, courts have allowed plaintiffs to file pseudonymously "only in those exceptional cases involving matters of a highly sensitive and personal nature, real danger of physical harm, or where the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity." *Nat'l Ass'n of Waterfront Emps. v. Chao*, 587 F. Supp. 2d 90, 99 (D.D.C. 2008); s*ee also United States v. Microsoft Corp*., 56 F.3d 1448, 1464 (D.C. Cir. 1995). None of those risks are present here. In fact, even though the exception is more commonly granted today, "in the twenty-five-year period between 1945 and 1969, only a single district court decision—anywhere in the country—featured a "John Doe"-like plaintiff as the lead or sole plaintiff (along with a single Supreme Court case reviewing a state court decision and three appellate rulings in administrative appeals)." *In re U.S. Off. of Pers. Mgmt. Data Sec. Breach Litig.*, 928 F.3d 42, 83 (D.C. Cir. 2019) (Williams, J., concurring).

Once a party raises a privacy interest, the court must weigh that interest against the public interest in open judicial proceedings. *Chao*, 587 F. Supp. 2d at 99. Granting anonymity should be rare, *Microsoft*, 56 F.3d at 1464, and the "moving party bears the weighty burden of both demonstrating a concrete need for such secrecy, and identifying the consequences that would likely befall it if forced to proceed in its own name." *In re Sealed Case*, 971 F.3d at 326. The plaintiff in this case has failed to carry that burden.

In order to determine whether a plaintiff has demonstrated a concrete need for secrecy, district courts have taken to considering five nonexhaustive factors in balancing the interests of the Appellant against the public interest:

> (1) whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of a sensitive and highly personal nature; (2) whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties (3) the ages of the persons whose privacy interests are sought to be protected; (4) whether the action is against a governmental or private party; and (5) the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously. *Chao*, 587 F. Supp. 2d at 99.

In this case, none of the Chao factors weigh in favor of Appeallant's motion. To determine whether a plaintiff's claim is so highly sensitive and personal as to warrant anonymity, courts look to whether that condition carries some level of social stigma. *See Doe v. Merritt Hosp., LLC*, 353 F. Supp. 3d 472, 482 (E.D. La. 2018) (listing instances where courts no longer permit Appellants to file anonymously due to HIV status because "public opinion about it has become more accepting in recent years"). For mental-health-related anonymous plaintiff claims, the simple fact that "information about a litigant's mental health may be revealed, without more, does not permit a party to proceed anonymously." *Doe v. Garland*, 341 F.R.D. 116, 119 (S.D. Ga. 2021). Mental health and addiction issues are, of course, personal, but Appeallant did not identify below any reasons why her issues are any more personal than, e.g., a plaintiff in a suit for cancer benefits. As such, the personal nature of the suit itself cannot carry this factor. Appeallant must demonstrate that she is seeking more than "to avoid the annoyance and criticism that may attend any litigation." Chao, 587 F. Supp. 2d. at 99. Speculative harm cannot suffice.

For similar reasons, the second Chao factor does not weigh in Appeallant's favor. To carry this factor, a plaintiff needs to make an actual showing of a real concrete and identifiable

"risk of retaliatory physical or mental" harm, not "fears of embarrassment or vague, unsubstantiated fears of retaliatory actions by higher-ups." Chao, 587 F. Supp. 2d at 99-100. In regards to the third Chao factor, age, courts generally quickly dispose of the factor if the plaintiff is not a minor. *See Doe v. Cabrera*, 307 F.R.D. 1, 9 (D.D.C. 2014).

Because the adult Appellant's mental health issues are not uncommon, and she provided only speculative evidence of potential mental harm if she had to file the case with her full name, the district court was correct when it weighed the first three factors in favor of the Appellee. While it is true that mental health issues are highly personal, that is the case with almost all medical problems. The Appellant suffers from Major Depressive Disorder, Generalized Anxiety Disorder, and Substance Abuse Disorder, which affect 21 million, Major Depression, National Institute of Mental Health (July 2023), https://www.nimh.nih.gov/health/statistics/major-depression 6.8 million Anxiety Disorders – Facts & Statistics, Anxiety & Depression Association of America (Last Visited Jan. 12, 2023), https://www.nimh.nih.gov/health/statistics/major-depression, and 48.7 million American Adults (12 and older for Substance Abuse Disorder) HHS, SAMHSA Release 2022 National Survey on Drug Use and Health Data, Substance Abuse and Mental Health Services Administration (Nov. 13, 2023), https://www.samhsa.gov/newsroom/press-announcements/20231113/hhs-samhsa-release-2022-nsduh-data#:~:text=In%202022%2C%2048.7%20million%20people,an%20AUD%20and%20a%20DUD. respectively. While there is still work to be done in regards to acceptance of mental health discussions in this country, the stigma is not so strong to afford many Americans who suffer from mental health issues a free pass to overcome the public's constitutionally protected interest in an open court system. *Doe v. Blue Cross & Blue Shield United of Wisconsin*, 112 F.3d 869, 872 (7th

Cir. 1997) (making obsessive-compulsive syndrome an automatic ground for a plaintiff to file anonymously would "propagate the view that mental illness is shameful").

Furthermore, the letter from the doctor is largely speculative, and only focuses on the fear of potential embarrassment that the *Chao* court said was insufficient to weigh this factor in favor of the Appellant. The only assertion Appellant alleges are that she is ashamed of her past struggle with her mental health, and that she fears a possible setback if anyone finds out. There is no assertion that any specific person from her friends, classmates, or professors would shun her if they learned of this case. She does not suggest that she knows anyone that stigmatizes mental health issues, or that she faces any potential ridicule from an individual, school, or potential employer if one were to find out about this case. *See Garland*, 341 F.R.D. at 118–19 ("Appellant does not provide any evidence of social stigma or specifically describe how knowledge of his mental health would adversely affect him besides feelings of embarrassment"). Ultimately, the doctor's assertion is little more than a statement that the Appellant would be subject to potential embarrassment which *Chao* categorically rejects when listing the factors this court must use. *Chao*, 587 F. Supp. 2d at 99. And while being an adult does not automatically dispense of the age factor, Appellant made no assertion that her age weighs in her favor. Therefore, the district court correctly weighed the first 3 factors in favor of the Appellee.

For the fourth factor, the identity of the defendant, courts are more likely to allow a plaintiff to file anonymously when filing a suit against the government as opposed to a private party because "government defendants do not share the concerns about 'reputation' that private individuals have when they are publicly charged with wrongdoing." *J.W. v. D.C.*, 318 F.R.D. 196, 201 (D.D.C. 2016). For the final factor, private defendants do run the risk of their reputation being tarnished when serious allegations are made against them. *See Frank*, 951 F.2d at 323. In

addition to potential reputational harm, defendants also face potential economic risks. *See Doe v. Indiana Black Expo, Inc.*, 923 F. Supp. 137, 141 (S.D. Ind. 1996).

Lastly, because the Appellee is a private company that faces potential reputational and economic harm for being publicly accused of a serious allegation, the final 2 factors weigh in favor of the Appellant filing with her real name. Processing medical claims is an important function of insurance companies and potential clients could take their business elsewhere. As the public is becoming more accepting of mental health issues, an accusation that the Appellee does not take mental health seriously could affect the company. And if the company applies for a loan while the case is outstanding, a creditor could factor in the potential liability that the lawsuit holds. It would be unfair to subject the company to these risks while the Appellant is shielded from any public scrutiny for levying these serious accusations. Therefore, this factor weighs in favor of the Appellee.

The district court did not abuse its discretion in denying Appellant's motion to proceed anonymously. The district court properly considered the sensitive and personal nature of the Appellant's mental health issues, the risk of mental harm asserted by the Appellant's doctor in her letter, and the Appellant's age in weighing the plaintiff's motion. Even though the district court did not directly declare it was applying the Chao factors, its discussions referenced above are a direct correlation to Chao factors 1, 2, and 4. As this court said in *In re Sealed Case*, the inquiry is fact driven and flexible, so there is no requirement to discuss every factor listed in the test. 971 F.3d at 326. The court's thoughtful consideration of the risks, harms, and consequences plaintiff alleged, compared to the public's interest in an open courthouse and a defendant's ability to protect itself from reputational harm, shows that the correct test was applied to this issue and should not be overturned.

II. Appellants fail to state a plausible claim for relief or identify relief to which they are entitled.

A. Appellants fail to state a plausible claim for relief.

A Complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A complaint of mere "labels and accusations" or "a formulaic recitation of the elements of a cause of action will not do." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555, 557). In determining the adequacy of the Complaint, a court "must first 'tak[e] note of the elements a plaintiff must plead to state [the] claim' to relief, and then determine whether the plaintiff has pleaded those elements with adequate factual support to 'state a claim to relief that is plausible on its face.'" *Center for Biological Diversity v. Regan*, 597 F. Supp. 3d 173, 186 (D.D.C. 2022) (cleaned up). Furthermore, a court may only consider facts contained within the "four corners of the complaint" and "any documents attached to or incorporated into the complaint, matters of which the court may take judicial notice, and matters of public record." *Id.* (cleaned up).

On a motion to dismiss under 12(b)(6), the court must accept the plaintiffs factual allegations as true and "construe the complaint in favor of the plaintiff." *Miller v. District of Columbia*, 319 F. Supp. 3d 308, 312 (D.D.C. 2018) (cleaned up). However, "[t]he court need not accept as true, however, 'a legal conclusion couched as a factual allegation.'" Id. (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). Nor must the court accept as true "inferences ... unsupported by the facts set out in the complaint." *Id.*

To allege a violation of the Parity act, appellant must plausibly allege a disparity in treatment limitations between medical/surgical benefits and mental health benefits[1]. *E.W. v. Health Net Life Ins. Co.*, 86 F.4th 1265, 1283 (10th Cir. 2023).

A plaintiff may allege a disparity in treatment limitations either facially or as applied. *Id.* at 1284; *see also* 29 C.F.R. § 2590.712(c)(4)(i). "A facial challenge focuses on the terms of a plan," while "as-applied challenges focus on treatment limitations that a plan applies." *Id.* Appellant has failed to plausibly plead that the terms of the plan distinguish in treatment limitations between medical/surgical benefits and mental health benefits.

In relevant part, the Plan's guidelines provide that a claimant may not receive higher level of treatment unless "a *less intense* level of care would not result in *significant* improvement." See Ex. A (excerpt from Universal's Mental Health and Substance Use Disorder Guidelines). This language does not support any allegation that the plan requires that a beneficiary must "fail first" at a lower-level of treatment before residential treatment is authorized, nor that the plan is being administered in such a way. Instead, this language is synonymous with Universal's basic requirement for all types of treatment benefits, that the treatment be *medically necessary*. If a lower level of care would result in *significant* improvement, then a higher level of care *is not* medically necessary. This language acts simply as a recital of common procedure in modern medicine—health professionals should not seek to overtreat patients when a less intense level of care could accomplish the same result, and appellant does not offer any plausible allegations that the plan terms are any different.

[1] The Parity Act by its express language requires disparity in stating that the treatment limitations for mental health/substance abuse disorders may not be "no more restrictive than the predominant treatment limitations applied to substantially all medical and surgical benefits covered by the plan." *Id.*

Additionally, appellant has failed to provide facts that suggest that the way that the plan is being applied violates the Parity Act. Appellant alleges that the current administration of the plan requires her to "fail first" at a lower level of treatment before being treated at a higher level. However, she does not allege any facts that indicate the plan would have been applied any differently to her had she claimed medical or surgical benefits. Instead, she makes conclusory statements which are contradicted by the very guidelines appellant touts. *See Iqbal*, 556 U.S. at 678 (finding that "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements"); *see also Twombly*, 550 U.S. at 555 (finding that "[a] court need not accept a plaintiff's legal conclusions as true . . . nor must a court presume the veracity of legal conclusions that are couched as factual allegations) (portions omitted). Appellant claims that the plan is being administered according to the guidelines, but even if that were true, it would not support the allegations Appellant makes. By the guidelines' express language, administrators authorize more intense treatment if less intense treatment "*would not result* in significant improvement." (emphasis added). "Would not result" does not suggest a failure requirement. Instead, this language allows doctor-fiduciaries to make pre-failure determinations as to medical necessity based on their expertise. Conversely, if the guidelines stated that a higher level of care may not be authorized unless a lower level of care "*does not result* in significant improvement," the outcome would be different. "Does not result" suggests that a claimant must actually fail before higher-level benefits are authorized.

Appellant has simply asserted a legal conclusion that this language in the guidelines is a "fail first" policy that constitutes a separate treatment limitation, when the plain and ordinary meaning of the language suggests no additional treatment limitation aside from the requirement that

treatment be medically necessary. As such, Appellant has failed to sufficiently plead that the Plan's guideline language is applied as a "fail first" policy.

B. The relief appellant seeks under § (a)(3) is duplicative of available relief under § 502(a)(1)(B).

Appellant primarily seeks payment of health insurance benefits, and declarative and injunctive relief requiring Universal to make benefit determinations in accordance with the plan terms. She seeks those remedies via claims under both § 502(a)(1)(B) and § 502(a)(3). However, when § 502(a)(1)(B) "offers an adequate remedy" to redress a claimant's injuries, a claim under § 502(a)(3) "is not 'appropriate.'" *LaRue v. DeWolff, Boberg & Assocs., Inc.*, 552 U.S. 248, 258 (2008). Because adequate relief is available under § 502(a)(1)(B), appellant's claim under § 502 (a)(3) is not 'appropriate.'

§ 502(a)(1)(B) allows for a claimant to "seek to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, and to clarify his rights to future benefits under the terms of the plan." "It is difficult to imagine a more accurate description" of the remedies appellant seeks than the remedies § 502(a)(1)(B) allows. *LaRue*, 552 U.S. at 257. Under the "recover benefits" remedy, a successful claimant would receive monetary compensation for the cost of the benefits she was entitled to. Under the "enforce" and "clarify" remedies, claimant would have this court "clarify" her rights with respect to the administration of benefit decisions, and this court could further "enforce" the administration of such rights. Accordingly, § 502(a)(1)(B) would adequately remedy the harms appellant claims in her complaint.

The "clarify" and "enforce" remedies available under § 502(a)(1)(B) are equivalent to declaratory and injunctive remedies. Declaratory remedies declare the legal rights of parties, 28 U.S.C. 2201, and an injunction coerces parties to behave in certain ways. *Ulstein Mar., Ltd. v. United States*, 833 F.2d 1052, 1055 (1st Cir. 1987). In this way, a cause of action for which statutory remedies include "clarifying" the legal rights of parties and "enforcing" such rights are duplicative of the traditional equitable remedies appellant seeks.

The court below held that the "declaratory and injunctive relief" appellant seeks are both duplicative of the "clarify" remedy. Although this Court reviews dismissals *de novo*, declaratory and injunctive remedies can sometimes have equivalent effects. *Clark v. United States*, 691 F.2d 837, 841 (7th Cir. 1982). Insurance benefit decisions are one of those instances, as are patent disputes or challenging executive conduct. Samuel L. Bray, The Myth of the Mild Declaratory Judgment, 63 Duke L.J. 1091, 1107 (2014). If a court "declares" that an insurance company must, e.g., defend a claimant, that is the equivalent of compelling the company to do so; the court need not specifically instruct the company to do so. *Id*. So too, here. If this court "clarifies" that appellee must administer appellant's benefits decisions in a different way than how appellee has been administering benefits, the court need not issue a commandment that the company then refrain from administering such decisions in a different way. Nor does a court need to go any further than instructing an insurance company how to administer the plan.

C. The relief appellant seeks under § 502(a)(3) is duplicative of available relief under § 502(a)(1)(B).

Although appellant never specifically requested surcharges in her complaint, the District Court interpreted Count II as requesting an equitable surcharge. In dicta, the Supreme Court blessed

surcharges as an equitable remedy which is sometimes appropriate. *CIGNA Corp. v. Amara*, 563 U.S. 421, 442 (2011). It defined surcharges as "monetary 'compensation' for a loss resulting from a trustee's breach of duty, or to prevent the trustee's unjust enrichment." *Id.* at 441.

However, an equitable surcharge is not an appropriate remedy in a denial of health benefits case. *Amara* states that "[t]he surcharge remedy extended to a breach of trust committed by a fiduciary encompassing any violation of a duty imposed upon that fiduciary." 563 U.S. at 442. Historically, however, the surcharge remedy extended to a breach of trust committed by a trustee. Applying the surcharge remedy to a fiduciary with no legal title to a trust's assets would be ahistorical, and not a remedy typically available in equity.

Although appellant never specifically requested surcharges in her complaint, the District Court interpreted Count II as requesting an equitable surcharge. In dicta, the Supreme Court blessed surcharges as an equitable remedy which is sometimes appropriate. *Amara*, 563 U.S. at 442. It defined surcharges as "monetary 'compensation' for a loss resulting from a trustee's breach of duty, or to prevent the trustee's unjust enrichment." *Id.* at 441.

However, an equitable surcharge is not an appropriate remedy in a denial of health benefits case. It is said in *Amara* that "[t]he surcharge remedy extended to a breach of trust committed by a fiduciary encompassing any violation of a duty imposed upon that fiduciary." 563 U.S. at 442. Historically, however, the surcharge remedy extended to a breach of trust committed by a *trustee*. Applying the surcharge remedy to a fiduciary with no legal title to a trust's assets would be ahistorical, and not a remedy typically available in equity.

The earliest modern clarification of the surcharge remedy came from Lord Hardwicke, in which he wrote that "Upon a liberty to the plaintiff to surcharge and falsify, the onus probandi is

always on the party having that liberty; for the court takes it as a stated account and establishes it. But if any of the parties can show an omission for which credit ought to be, that is a surcharge." *Dempsey v. McGinnis*, 219 S.W. 148, 151 (Mo. App. 1920) (quoting *Pitt v. Cholmondeley*, 2 Ves. 565, 566 (1787)). Lord Hardwicke was speaking of accounts of trust assets. In cases where it is alleged that a trustee did not produce a full and true accounting of the assets he was charged to maintain, then a beneficiary may surcharge the trustee, for that trustee had legal title to the alleged missing assets.

Such clarification can be found through the centuries. The Supreme Court held that "[i]n equity, surcharge is a remedy that is available when there is a dispute over an account that was alleged to have been settled or complete." *Perkins v. Hart*, 24 U.S. 237, 256 (1826). In an early edition of Black's Law Dictionary, it defined the equitable surcharge remedy as meaning "[t]o show that a particular item, in favor of the party surcharging, ought to have been included, but was not, in an account which is alleged to be settled or complete." Black's Law Dictionary*,* 4th ed., 1910. Even today, the Third Restatement of Trusts allows for surcharges or restitution for breaches of trust against *trustees*. §§ 95, 100.

The reason a surcharge was an appropriate remedy against trustees goes back to the very reason trusts are traditionally considered the near-exclusive province of courts of equity. *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 256 (1993). The fundamental principles which guided jurisdiction over trust cases were the division between a legal owner of assets and the equitable owner of the same assets and the inadequacy of available remedies to the equitable owners of those assets at a court of law. Indeed, the very "jurisdiction of equity is founded upon the supposed inadequacy of the remedy at law." C.C. Langdell, A Summary of Equity Pleading, §

190 (2d ed. 1883). When the court of law provided a remedy that was "direct, certain, and adequate," and "as effectual" as a remedy that a court of equity could provide, then the Courts of Chancery could not only offer no relief to such a plaintiff, but it had no jurisdiction to hear the case. Joseph Story, Commentaries on Equity Pleadings § 473 (1838). Accordingly, "if A has received property to hold in trust for B, the latter can have no remedy at law, for A is confessedly the owner of the property and a court of law cannot compel him to perform the trust." Langdell, *supra*, at § 40. It was the inadequacy of the remedies available at law to beneficiaries of trustees that gave courts of equity nearly exclusive jurisdiction over trust cases.

But benefit administration decisions are contractual in nature, *Strom v. Goldman, Sachs & Co.*, 202 F.3d 138, 142 (2d Cir. 1999), and damages for breach of contract are legal in nature. *Mertens*, 508 U.S. at 255. The doctor making benefit decisions received no property to hold in trust for appellants. The jurisdiction of equity over trusts arose from the separation of the legal owner of assets and the equitable owner of assets. Langdell, *supra*, at § 40. The administration of a contract to which a trust is a party does not give rise to the same concerns that required equity to step in. Accordingly, holding doctors making benefit decisions personally liable for benefit claims would be both grossly unfair and ahistorical.

Further, the monetary relief appellants seek are not true surcharges, but are simply claims for compensatory damages, dressed up under another name. Calling a remedy a surcharge does not make it so. Appellant's § 502(a)(3) surcharge claim is for such monetary amounts "as will compensate the injured party for the injury sustained and nothing more;" that is the traditional definition of compensatory damages. *Mertens,* 508 U.S. at 255. Claimants dressing up their requests for legal relief under equitable clothing is nothing new. What matters is not that

claimant alleges her request for relief is equitable, but what the remedy actually *is*. *See Mertens*, 508 U.S. at 255 (noting that Petitioners claim that they seek equitable relief, but "what they really seek" is compensatory damages).

CONCLUSION

Based on the foregoing, appellee, Universal Health Insurance Co., requests that the court deny the appeal filed by plaintiff Appellant for both issues. Appellant should not be allowed to proceed with this case anonymously because her interest is simply to avoid the potential embarrassment that could come with this litigation, and her evidence of potential mental harm does not outweigh the public's interest in having an open court system. Furthermore, Plaintiff's § 502(a)(3) claim must be dismissed because that claim is duplicative of her § 502(a)(1)(B), which would provide a complete remedy should the court rule in her favor on that issue.

Dated: Jan. 12, 2024

Respectfully submitted,

/s/__Team 6_____

TEAM 6

Counsel for *Defendant-Appellee*